Supreme Court, U.S.
FILED

112

(1) 08-647 NOV 11 2008

OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

Paul S. Silvas,

Petitioner,

Vs.

Remington Oil and Gas Corporation,

Respondent.

On Petition For Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Paul S. Silvas,
In Pro Se
15003 Reynolds Rd.
Pearlington, MS 39572
Ph. (228) 533-9249

QUESTIONS PRESENTED FOR REVIEW

1

Whether, Silvas was denied the protection of Due Process Clause as stated in the United State Constitution, Amendment V & XIV ? When Leave to File Motion, Fed. Civ. Proc. Rule 60b (5)(6), the Memorandum is not allowed to be submitted ?

2

Whether, The United States Constitution, amendment XIV, "equal protection clause" is violated by the lower federal courts? When the same issues emanating from the same transaction is a Cause of Action in the State Court ?

3

Whether, Justice is denied simply because Silvas a Pro Se filed a complaint in Federal Court ? The Appellate Court now holding that time is a bar to further proceedings.

LIST OF PARTIES

Petitioner represented in this petition is now 71 years of age a senior citizen of the United States who filed a complain for Breach of Contract. The list of parties is as follows:

PETITIONER

Paul S. Silvas, Pro Se

RESPONDENT

Remington Oil and Gas Corporation, Respondent

Energy Resource Technology GOM, Inc., as successor to Remington Oil and Gas Corporation.

Helix Energy Solutions Group, Inc., (Parent)

Richard A Goins, Esq. **Counsel of Record** for Remington Oil and Gas Corporation.

THIRD PARTY PURCHASER

Cedar Bayou, L.L.C., found to be "Indispensable"

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928 So.2d 539 (La. 2006) 6

Petitioner, In his quest for justice, respectfully prays that writ of certiorari be issued to review the judgments and opinions below.

JUDGMENTS AND OPINIONS

The Judgment and Opinion by the United States Court of Appeals for the Fifth Circuit, Filed September 10, 2008, which is unpublished and reproduced at pages A-1 thru A-6 Motion for Rehearing not submitted.

United States District Court for the Southern District of Mississippi, TEXT ONLY ORDER, Filed March 12, 2008, reproduced on pages A-7,8 Motion for Rehearing not submitted.

JURISDICTION

Jurisdiction of the United States District Court for the Southern District of Mississippi was proper pursuant to 28 U.S.C. § 1655 and Harper Maclead Solicitors v. Keaty & Keaty, 206 F.3d 389 (5th Cir., 2001) this is the court of rendition. Fed. Civ. Proc. Rule 60(b) Supplemental Motion must be submitted to the court of rendition. TEXT ONLY ORDER was filed March 12, 2008. Notice of Appeal was timely Filed.

Jurisdiction of the United States Court of Appeals for the Fifth Circuit is proper pursuant to 28 U.S.C. § 1291 and Harper Maclead Solicitors v. Keaty & Keaty, 260 F.3d 389 (5th Cir., 2001) this was also a court of rendition. Judgment was filed September 10, 2008.

Jurisdiction of the Supreme Court of the United States is conferred under 28 U.S.C. § 1254.

CONSTITUTIONAL and STATUTORY PROVISIONS

The underling action was pursuant to a Supplemental Motion, Fed. Civ. Proc. Rule 60(b)(5)(6) which states in pertinent part the following:

RULE 60
RELIEF FROM JUDGMENT OR ORDER

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been

> reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

This case also violated petitioner's rights under V and XIV Amendments to the United States Constitution, the V Amendment states in relevant part the following:

> ". . . . .nor be deprived of life , liberty, or property, without due process of law;"

The XIV Amendment to the United States Constitution in pertinent part states the following:

> ". . . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE[1]

These proceedings stem from a Breach of Contract between lessees, of which Silvas was one, and Remington Oil and Gas Corporation (Remington) which sole property to a third party Cedar Bayou L.L.C., (Cedar Bayou).

Silvas ask the Court's indulgence. The following narrative is essential to the understanding of the purpose of the Rule 60(b)(5)(6) motion.

Silvas was the first to file a complaint (in Pro Se) against Remington, thereafter Counsel was obtained and other lessee joined the suite.[2] Prior to dismissal of the case, Silvas withdrew from the case and the other lessees (represented by counsel) filed a complaint in the Louisiana Sate District Court, Barnhill v. Remington Case No. 02-19305, Filed December 13, 2002, (Barnhill).

Silvas moved to Mississippi (lease not renewed) and file a complaint in U.S. District Court Southern District of Mississippi, Case No. 1;02893 GR, December 20, 2002. The case was dismissed January 21, 2004, ruling in part

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[1] All references to the Record on Appeal are made in the following manner: "ROA" where ROA designates the record, followed by the record volume number and the particular in that volume=(ROA, Vol.__, Pg. __)

[2] U.S. District Court, Eastern District of Louisiana. Case No. CA 02-2037 which was dismissed April 10, 2003.

failure to join an indispensable party. ROA, Vol. 2, Pg. 408, L. 2. Motion for rehearing was not submitted. Silvas appealed and to the United States Court of Appeals, Fifth Circuit. The Court affirmed September 21, 2004 and also ruled that Silvas did not possess a right of first refusal in 2001, which is a necessary fact to prevail on his claims, (ROA, Vol. 2, Pg. 418, Ls., 16,17,18), and thus deprive Silvas of his federal and constitutional violations. This Court denied Certiorari, Case No. 04-920, March 21, 2005, (ROA, Vol. 2, Pg. 389).

In the Barnhill State action the Louisiana District Court granted Cedar Bayou an Exception of No Cause of Action April 10, 2003, (ROA, Vol.,2 Pg. 429). Barnhill appealed to the State of Louisiana, Court of Appeal, Fourth Circuit. On October 4, 2004. Cedar Bayou submitted a Motion to Leave to Supplement Appellees' Brief, stating the following;

> "The *Silvas* case and the instant *Barnhill* litigation share a common nucleus of operative facts, emanate from the same transaction, and share the same factual allegations." ROA, Vol. 2, Pg.421, Lines 5,6,7. See App. Pg. A-9, A-10

and submitted the Silvas v. Remington Opinion. The State of Louisiana, Court of Appeal in the Barnhill matter rendered judgment,

August 10, 2005 setting the facts of Right of First Refusal and affirming the Exception of No Cause of Action granted Cedar Bayou. Barnhill v. Remington Oil and Gas Corp., 918 So.2d 52 (La. App. 4th Cir. 2005) The Supreme Court of Louisiana in Barnhill v. Remington Oil and Gas Corp., 928 So.2d 539 (La. 2006) affirmed the Right of First Refusal but remanded on "judicial control of leases" Silvas made no such assertion as to judicial control of leases.

FED. CIV. PROC. RULE 60(b)(5)(6) MOTION

The Present issue before the Court

After the rulings in the Louisiana State Courts, in the Barnhill case. Silvas sought counsel (ROA, Vol. 2, Pg.432,433). It was not until Silvas discovered the rulings of In re; Katrina Cannel Breaches Litigation, 495 F.3d 191 (C.A. 5, La. 2007) and Erickson v. Pardus, 127 S.Ct. 2197 (2007) that Silvas submitted the leave to file supplementary motion, Rule 60 (b) motion.

Silvas filed Leave to File Supplemental Motion for review, Supplemental Motion Fed. Civ. Proc. Rule 60(b)(5)(6), March 10, 2008, ROA, Vol. 2, Pgs. 399 thru 433. Deputy Court Clerk would not allow the Memorandum to be file until Leave was granted, On March 12, 2008, Leave was denied. App.C, Pg.A-7 The District

Court's TEXT ONLY ORDER denying Leave, dose not meet the standards required by the Court since it did not have the benefit of the memorandum to make and informed decision, as did the Court of Appeals for the Fifth Circuit. Silvas filed timely Notice of Appeal. ROA, Vol. 2, Pg. 434. Motion for rehearing was not submitted.

The United States Court of Appeals for the Fifth Circuit affirmed, September 10, 2008. App.A, P. A-1,2 and in its opinion stated the following; "...that arguably supports Silvas's contention that he actually had a valid cause of action in his initial suit..." at App.B, P. A-5, Ls. 14,15.

However, the Court further stated at A-5, Ls.27-30 and on A-6, Ls.1,2 "Put simply, even if Silvas is right that he would win in his suit against Remington under the current state law, the district court would not be required to let him re-litigate this case all of these years later."

The only difference between Silvas and Barnhill is Silvas's Federal issues (damages) and Barnhill's State issues (rescind the sale of property and damages) and as of this date, November 6, 2008, Barnhill has not completed Discovery.

REASON FOR GRANTING CERTIORARI

I

That the standard of Due Process has not been met by the District Court's denial of Leave to File Supplemental Motion Rule 60 (b), when it ruled that the motion was frivolous, the case was closed, Silvas had exhausted his appeal process and no reason to re-open this cause. App.C, Pg. A-7,8. Although a copy of the Supplemental Motion Fed. Civ. Proc. Rule 60(b)(5)(6) was attached the Memorandum was not allowed. Thus the District Court was deprived of the benefit of the law and argument to make an informed decision. Nor dose the District Court's comply with the standards set by the Court in Erickson v. Pardus, 127 S.Ct. 2197, at 2200, which states the following;

> [2,3]. . . . "a short and plain statement of the claim showing that the pleader is entitled to relief."
>
> [4] . . . . . ("All pleadings shall be so construed as to do substantial justice").

The Circuit and District Courts across the nation are divided as to whether having denied Certiorari, is it a bar to filing a Rule 60 (b) motion? The Third, Fifth, Eight and Tenth Circuits have refused to allow cases to be re-opened after the Supreme Court's denial of certiorari when the motion for reconsideration was based on an intervening change in law.

A decision by the Court would end the division and is in the interest of the Nation.

II

To grant Equal Protection of the Law in view of the fact that the United States Court of Appeals for the Fifth Circuit acknowledge that Silvas did have a cause of action, since, both the Silvas (Federal) action and Barnhill (La. State) action are the result of the same breach of contract by Remington. The Louisiana Courts made no new law more simply clarified the currant law and its interpretation of the lease contract.

Although this is not a case involving denaturalization of citizenship the dicta cited in Polities v. United States, 364 U.S. 426, Silvas considers relevant, at 440 when addressing Rule 60(b);

> ". . . .the District Court need 'not abdicate its power . . .if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong.' . . . . The principle of finality is not offended by modification which disturbs no accrued rights and concerns only future conduct."

Silvas was further penalized for filing an Appeal by required to pay to Remington the cost of appeal to be taxed by the clerk of the court. App.A, at A-2, Ls. 5,6,7.

III

In the Interest of Justice the courts have admittedly held that a cause of action should be heard on it merits. Although the Appellate Court has stated even if Silvas could win his case the District Court would not be required to all these years later to have his day in Court because of time. The opinion reads more of one to rid the courts of a pesky pro se than to administer justice. Silvas, alone in his quest for justice has relentlessly pursued his cause of action only to be deprived justice by errors of the lower courts. Remington can not be prejudiced, since, the State case (Barnhill) is still on going and as yet to complete discovery on the same breach of contract.

CONCLUSION

WHEREFORE, Silvas, prays for the afore going reasons that the Court grant this Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully Submitted

/s/_____

Paul S. Silvas, Petitioner
In Pro Se
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APPENDIX - A

FINAL JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FILED STEPTEMBER 10, 2008

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-60321
Summary Calendar

D.C. Docket No. 1:02-CV-893

PAUL S. SILVAS

Plaintiff – Appellant

v.

REMINGTON OIL & GAS CORPORATION

Defendant – Appellee

Appeal from the United States District Court for the Southern District of Mississippi, Gulfport

Before REAVLEY, DAVIS, AND ELROD, CIRCIT JUDGES.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the cost of appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE:

A True Copy
Attest

Clerk, U.S. Court of Appeals,
Fifth Circuit

By:_____
Deputy

New Orleans, Louisiana

APPENDIX - B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
FILED SEPTEMBER 10, 2008

No. 08-60321
Summary Calendar

PAUL S. SILVAS

Plaintiff-Appellant

v.

REMINGTON OIL & GAS CORPORATION

Defendant- Appellee

Appeal from the United States District Court
For the Southern District of Mississippi
USDC No. 1:02-CV-893

Before REAVLEY, DAVIS, and ELROD, Circuit Judges.
PER CURIAM:

Paul Silvas appeals on his own behalf the district court's dscision to deny his Rule 60(b) motion to re-open his case against Remington Oil and Gas Corporation. For the reasons that follow, we affirm.

Silvas first contends that the district court misconstrued his Rule 60 motion as a motion for summary judgment. To support his contention, Silvas points to the fact that the district court's order appearing on its docket sheet provides, in part, the following: "TEXT ONLY ORDER denying Plaintiff's 56 Motion for Leave to File a Supplement Motion for Review as frivolous." Silvas contends that the inclusion of the number 56 meant that the district court mistreated his motion as a motion for summary judgment since Rule 56 of the Federal Rules of Civil Procedure governs motion for summery judgment. As Remington observes, however, the "56" on the docket sheet is a cross-reference to entry 56—the entry immediately preceding the district court's order entry—which is the docket entry corresponding to Silvas's Rule 60 motion. In other words, by including the "56" in its order, the district court was merely identifying by docket number the motion denied. Silvas, a non-attorney, was justifiably confused by the docket-sheet jargon. We are confident, however, that the district court properly considered Silvas's motion as a Rule 60 motion.

Pursuant to 5th Cir. R.47.5 the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Silvas next contends that, even if the district court properly treated his motion as a Rule 60 motion, it erred in denying it. We review the denial of a Rule 60 motion for abuse of discretion. New Hampshire Ins. Co. v. Martech USA, Inc., 993 F.2d 1195, 1200 (5th Cir. 1993). There was no abuse of discretion here. In 2004, the district court dismissed Silvas's lawsuit against Remington, determining that Silvas had failed to include an indispensable third-party. We subsequently upheld that dismissal. Two years later, the Louisiana Supreme Court issued an opinion in Barnhill v. Remington Oil & Gas Corp. that arguably supports Silvas's contention that he actually had a valid cause of action in his initial suit (although Barnhill did not speak to the issue of whether the third-party in the Silvas case was indispensable). 928 So.2d 539 (La. 2006). It is based on Barnhill that Silvas now claims that the district court should (under Rule 60(b) of the Federal Rules of Civil Procedure) re-open his case against Remington. But this court has long recognized that a subsequent change in the law is not sufficient, in and of itself, to justify allowing a litigant to re-open a case under Rule 60. See, e.g., Bailey v. Rayan Stevedoring Co., 894 F.2d 157, 160 (5th Cir. 1990). Put simply, even if Silvas is right that he would win in his suit against Remington under the current state of the law, the district court would not be

required to let him re-litigate this case all of these years later. Moreover, to the extent that Silvas claims the district court should have re-opened the case for another reason, the district court did not abuse its discretion in refusing to accede to that request. See id.

AFFIRMED.

APPENDIX-C

FILED ON MARCH 12, 2008

Orders on Motions
1:02-cv- 00893-WJG Silvas v. Remington Oil & Gas **CASE CLOSED on 01/21/2004**
CLOSED,JMR

U.S. District Court

Southern District of Mississippi

Notice of Electronic Filing

The following transaction was entered on 3/12/2008 at 8:58 PM CDT and filed on 3/12/2008
Case Name: Silvas v. Remington Oil & Gas
Case Number: 1:02-cv-893
Filer:
WARNING: CASE CLOSED on 01/21/2004
Document Number: No document attached

Docket Text:
TEXT ONLY ORDER denying Plaintiff's [56] Motion for Leave to File a Supplemental Motion for Review as frivolous. This matter has been closed on the docket of this court since January 2004. Plaintiff has exhausted the appeal

process, the Fifth Circuit having affirmed the decision of this Court in September 2004, and the United States Supreme Court having denied Certiorari in March 2005. The Court finds no reason to re-open this cause. No further written order shall issue. Signed by District Judge Walter J. Gex III on March 12, 2008.(Gex, Kathleen)

1:02-cv-893 Notice has been electronically mailed to:

Michael Farrell mfarrell@youngwilliam.com, cgooch@youngwilliams.com

Richard A. Goins–PHV rgoins@goinsaaron.com, agondolfi@goinsaaron.com

1:02-cv-893 Notice has been delivered by other means to:

Alejandro E. Gomez(PHV)
GOINS AARON, PLC
1010 Common St., Suite 2600
New Orleans, LA 70112

Paul S. Silvas
15003 Reynolds Rd.
Pearlington, MS 39572

APPENDIX – D

FILED OCTOBER 5, 2004

STATE OF LOUISIANA

COURT OF APPEAL, FOURTH CIRCUIT

No. 2004-CA-0725

Kenneth and Donna Barnhill, et al.
v.
REMINGTON OIL AND GAS CORP., Cedar Bayou, L.L.C. and Kenneth M. Carter, Individually

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MOTION FOR LEAVE TO SUPPLEMENT APPELLEES' BRIEF

ON APPEAL FROM THE HONORABLE ETHEL S. JULIEN OF THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
NO.02-19305, SECTION 8, DIVISION "N"

Appeal Counsel for Defendant-Appellees
(omitted)

NOW INTO THE COURT, through undersigned counsel, come appellees, Cedar Bayou, L.L.C. and Kenneth M. Carter, who move this court for leave to supplement their brief in this matter in light of an opinion issued by the United States Court of Appeals or the Fifth Circuit on September 21, 2004, in the case of *Silvas v. Remington Oil and Gas Corp.,* 04-60068 (5th Cir. 9/21/2004). The *Silvas* case and the instant *Barnhill* litigation share a common nucleus of operative facts, emanate from the same transaction, and share the same factual allegations. The supplemental brief will not delay the courts schedule, nor impede its determination of this matter. Accordingly, appellee submits that the opinion in the *Silvas* case is persuasive authority which should be considered by this Court and therefore moves for leave to file the attached supplement to its brief.

Respectfully Submitted,

MONTGOMERY, BARNETT, BROWN, READ, HAMMOND & MINTZ, L.L.P.

/s/_____
Terrel J. Broussard (#3531)

Counsel for Defendant-Appellees, (Omitted)